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Attorneys for Plaintiff
 David Thomas

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

David Thomas	Case No: <u>'12CV0651 JAH JMA</u>
Plaintiff,	Complaint For Damages
v.	Jury Trial Demanded
NCO Portfolio Management Inc., and Hunt & Henriques	
Defendants.	

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.

12 3. David Thomas, (Plaintiff), through Plaintiff's attorneys, brings this action to
13 challenge the actions of NCO Portfolio Management, Inc., and Hunt &
14 Henriques, ("Defendants"), with regard to attempts by Defendants to
15 unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this
16 conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendants took place
23 in California.

24 7. Any violations by Defendants were knowing, willful, and intentional, and
25 Defendants did not maintain procedures reasonably adapted to avoid any such
26 violation.

JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
9. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").
10. Because Defendants do business within the State of California, personal jurisdiction is established.
11. Venue is proper pursuant to 28 U.S.C. § 1391.
12. At all times relevant, Defendants conducted business within the State of California.

PARTIES

13. Plaintiff is a natural person who resides in the City of San Diego, State of California.
14. Defendant NCO Portfolio Management, Inc. is located in the City of Metairie, in the State of Louisiana.
15. Defendant Hunt & Henriques is located in the City of San Jose, in the State of California.
16. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
17. Defendants are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
18. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from

1 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
2 1788.2(h).

3 19. Defendants, in the ordinary course of business, regularly, on behalf of
4 themselves, or others, engage in debt collection as that term is defined by
5 California Civil Code § 1788.2(b), are therefore debt collectors as that term is
6 defined by California Civil Code § 1788.2(c).

7 20. This case involves money, property or their equivalent, due or owing or
8 alleged to be due or owing from a natural person by reason of a consumer
9 credit transaction. As such, this action arises out of a consumer debt and
10 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

11 **FACTUAL ALLEGATIONS**

12 21. Sometime before September 14, 2006, Plaintiff is alleged to have incurred
13 certain financial obligations.

14 22. These financial obligations were primarily for personal, family or household
15 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
16 §1692a(5).

17 23. These alleged obligations were money, property, or their equivalent, which is
18 due or owing, or alleged to be due or owing, from a natural person to another
19 person and are therefore a “debt” as that term is defined by California Civil
20 Code §1788.2(d), and a “consumer debt” as that term is defined by California
21 Civil Code §1788.2(f).

22 24. Sometime thereafter, but before September 14, 2006, Plaintiff allegedly fell
23 behind in the payments allegedly owed on the alleged debt. Plaintiff currently
24 takes no position as to the validity of this alleged debt.

25 25. On or about September 14, 2006, Defendants served Plaintiff’s employer an
26 Earnings Withholding Order to begin garnishing Plaintiff’s wages.

27 26. Plaintiff’s wages were subsequently garnished for the following two years for
28 the full amount of the judgment, in the amount of \$26,861.95.

27. At that time the garnishment stopped, and Plaintiff believed the judgment was paid and a satisfaction of judgment should have been filed.
28. In February of 2012, Plaintiff went to refinance his home.
29. During this process a lien was discovered against Plaintiff in the amount of \$26,861.95, for the debt that Plaintiff had already paid via the wage garnishment from 2006 until 2008.
30. Through this conduct, Defendants were attempting to collect an amount not authorized by agreement or permitted by law. Consequently, Defendants violated 15 U.S.C. § 1692f(1).
31. Because this action violated the language in 15 U.S.C. § 1692f(1) as it is incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.
32. Plaintiff then attempted to call Defendant Hunt & Henriques to explain that this debt has previously been paid. After several attempts, Plaintiff was finally able to speak to Defendant Hunt & Henriques' agent Brandee Saldivar with the position of "Post-Judgment Manager."
33. During this conversation, Defendant Hunt & Henriques' agent Brandee Saldivar claimed that Plaintiff's employer failed to pay Sheriff and Court fees and that was the reason the judgment was still outstanding.
34. These actions by Defendant were a false, deceptive, or misleading representation or means in connection with the collection of the alleged debt. As such, this action by Defendants violated 15 U.S.C. §§ 1692e and 1692e(10), and because this action violated the language in 15 U.S.C. §§ 1692e and 1692e(10), as it is incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission also violated Cal. Civ. Code § 1788.17.

35. Through this conduct, Defendant used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendant violated 15 U.S.C. § 1692f, and because this action violated the language in 15 U.S.C. § 1692f as it is incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission also violated Cal. Civ. Code § 1788.17.

36. Through this conduct, Defendant made a false representation concerning the character, amount, or legal status of a debt. Consequently, Defendant violated 15 U.S.C. § 1692e(2)(A), and because this action violated the language in 15 U.S.C. § 1692e(2)(A) as it is incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission also violated Cal. Civ. Code § 1788.17.

37. Through this conduct, Defendants were attempting to collect an amount not authorized by agreement or permitted by law. Consequently, Defendants violated 15 U.S.C. § 1692f(1).

38. Because this action violated the language in 15 U.S.C. § 1692f(1) as it is incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

39. Defendant's failure to file a satisfaction of judgment, a partial satisfaction of judgment, or a notice of accrued interest at any point since the end of Plaintiff's wage garnishment was a violation of both the Fair Debt Collection Practices Act and the Rosenthal Fair Debt Collection Practices Act.

40. Through this conduct, Defendant made a false representation concerning the character, amount, or legal status of a debt. Consequently, Defendant violated 15 U.S.C. § 1692e(2)(A), and because this action violated the language in 15 U.S.C. § 1692e(2)(A) as it is incorporated by reference in the Rosenthal Fair

1 Debt Collection Practices Act, through California Civil Code § 1788.17, this
2 conduct or omission also violated Cal. Civ. Code § 1788.17.

3 41. Through this conduct, Defendants were attempting to collect an amount not
4 authorized by agreement or permitted by law. Consequently, Defendants
5 violated 15 U.S.C. § 1692f(1) and because this action violated the language in
6 15 U.S.C. § 1692f(1) as it is incorporated by reference in the Rosenthal Fair
7 Debt Collection Practices Act, through California Civil Code § 1788.17, this
8 conduct or omission also violated Cal. Civ. Code § 1788.17.

9 42. Plaintiff is informed and believes and thereon alleges that Defendant Hunt &
10 Henriques were acting as an agent of Defendant NCO Portfolio Management
11 Inc.; Therefore, Defendant NCO Portfolio Management Inc. can be held
12 responsible and is vicariously liable for the conduct of Defendant Hunt &
13 Henriques.

14 43. Through Defendant's actions, Defendant has caused Plaintiff to miss out on
15 an opportunity for credit at a lower interest rate and has therefore caused
16 Plaintiff actual damages.

17 CAUSES OF ACTION

18 COUNT I

19 FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

20 15 U.S.C. §§ 1692 ET SEQ.

21 44. Plaintiff repeats, re-alleges, and incorporates by reference, all other
22 paragraphs.

23 45. The foregoing acts and omissions constitute numerous and multiple violations
24 of the FDCPA, including but not limited to each and every one of the above-
25 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

26 46. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
27 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
28 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,

reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every defendant, jointly and severally.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

47. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

48. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

49. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);

- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

50. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: March 15, 2012

By: s/Joshua B. Swigart
Joshua B. Swigart
Attorneys for Plaintiff

HYDE & SWIGART
Phoenix, Arizona

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

David Thomas

(b) County of Residence of First Listed Plaintiff San Diego, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart

411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

NCO Portfolio Management Inc., and Hunt & Henriques

County of Residence of First Listed Defendant Jefferson, LA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'12CV0651 JAH JMA**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 1692 et seq.

Brief description of cause:

Unfair Debt Collection Practices

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

75,001.00+

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/15/2012

s/Joshua B. Swigart

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE